



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2020-0213; FRL-10017-20-Region 9]

#### **Air Plan Approval; California; Consumer Products Regulations; Correcting Amendment**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Correcting amendment.

**SUMMARY:** On September 16, 2020, the Environmental Protection Agency (EPA) issued a final rule titled “Air Plan Approval; California; Consumer Products Regulations.” That publication inadvertently omitted the amendatory instructions revising the entries that relate to California’s Tables of Maximum Incremental Reactivity (MIR) Values in the table listing the approved State rules in the California state implementation plan (SIP). This document corrects this omission and revises the entries accordingly.

**DATES:** This rule is effective on **[Insert Date of publication in the *Federal Register*]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2020-0213. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Buss, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Phone: (415) 947-4152 or by email at [buss.jeffrey@epa.gov](mailto:buss.jeffrey@epa.gov).

**SUPPLEMENTARY INFORMATION:** On September 16, 2020 (85 FR 57703), the

Environmental Protection Agency (EPA) issued a final rule titled “Air Plan Approval; California; Consumer Products Regulations.” That publication inadvertently omitted the amendatory instruction revising the entries for sections 94700 (“MIR Values for Compounds”) and 94701 (“MIR Values for Hydrocarbon Solvents”) of title 17 of the California Code of Regulations (CCR). This action corrects the omission and revises the entries as intended in the September 16, 2020 final rule.

The EPA has determined that this action falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this action is unnecessary because the underlying rule for which this correcting amendment has been prepared was already subject to a 30-day comment period, and this action merely adds amendatory instructions that were inadvertently omitted in the underlying rule. Further, this action is consistent with the purpose and rationale of the final rule, which is corrected herein. Because this action does not change the EPA’s analyses or overall actions, no purpose would be served by additional public notice and comment. Consequently, additional public notice and comment are unnecessary.

The EPA also finds that there is good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date of less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. This action merely adds amendatory instructions that were inadvertently omitted in a previous rulemaking. For these reasons, the EPA finds good cause

under APA section 553(d)(3) for this correction to become effective on the date of publication of this action.

### **Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the California rules described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup> The EPA has made, and will continue to make, these documents available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### **Statutory and Executive Order Reviews**

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to E.O. 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action is not an E.O. 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under E.O. 12866. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). In addition, this action does not

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by E.O. 13175 (65 FR 67249, November 9, 2000). This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of governments, as specified by E.O. 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to E.O. 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This action adding missing amendatory instructions does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by E.O. 12898 (59 FR 7629, February 16, 1994). In issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of E.O. 12988 (61 FR 4729, February 7, 1996). The EPA has complied with E.O. 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act (5 U.S.C. 801 et seq.), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United

States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, the EPA had made such a good cause finding, including the reasons therefore, and established an effective date of **[Insert Date of publication in the *Federal Register*]**. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action adding missing amendatory instructions is not a “major rule” as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: February 5, 2021.

Deborah Jordan  
Acting Regional Administrator,  
Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## **PART 52 — APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart F – California**

2. In §52.220a, amend Table 1 to paragraph (c) by revising the entries for “94700” and “94701” to read as follows:

#### **§ 52.220a Identification of plan – in part.**

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(c) \* \* \*

**TABLE 1--EPA-APPROVED STATUTES AND STATE REGULATIONS<sup>1</sup>**

State Citation	Title/Subject	State effective date	EPA approval date	Additional explanation
<p>* * * * *</p> <p><b>Title 17 (Public Health), Division 3 (Air Resources), Chapter 1 (Air Resources Board); Subchapter 8.6 (Maximum Incremental Reactivity); Article 1 (Tables of Maximum Incremental Reactivity (MIR) Values)</b></p>				
94700	MIR Values for Compounds	1/1/2015	[Insert date of publication in the Federal Register], [Insert citation of publication]	Submitted by CARB on December 1, 2016.
94701	MIR Values for Hydrocarbon Solvents	10/2/2010	[Insert date of publication in the Federal Register], [Insert citation of publication]	Submitted by CARB on December 1, 2016.

<sup>1</sup> Table 1 lists EPA-approved California statutes and regulations incorporated by reference in the applicable SIP. Table 2 of paragraph (c) lists approved California test procedures, test methods and specifications that are cited in certain regulations listed in table 1. Approved California statutes that are nonregulatory or quasi-regulatory are listed

in paragraph (e).

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